

Dr. Schlatter und Kollegen

Rechtsanwälte Steuerberater Fachanwälte

Dr. Schlatter und Kollegen, Kurfürsten-Anlage 59, 69115 Heidelberg

CESR
The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
FRANCE

Date
31. January 2007

unser Zeichen - bitte stets angeben -
07/00127 HO/mb

Dear Sir or Madam:

This is to inform you that we legally represent **IMB Vermögensverwaltung GmbH**, Palais Rohan, Praterstraße 38, 1020 Wien, Austria, and its branch in Germany, Bahnhofstraße 29, 66606 St. Wendel.

In this letter we refer to your document “The Passport under MiFID” dated December 15, 2006 and in particular to Article 71 (page 15) and should like to make the following statement on behalf and authorized by our clients:

According to the interpretation under Article 71 in the document “The Passport under MiFID” dated December 15, 2006, tied agents would always be regarded as “branches”, if their registered office is not in the same country as the registered office of the investment firm assuming liability. The view is taken that in this case the tied agents proper should be treated as “branch” and that thus the entire authorization and supervision provisions were to be applied to each individual tied agent.

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Rechtsanwälte zugelassen auch beim
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RAin Stiehl, RA Dr. Schneidenbach

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Should this interpretation under Article 71 be regarded as generally binding and eventually be implemented, our clients would lose their legal basis to do business.

Upon notice of the Austrian Financial Market Authority issued on December 15, 2000 pursuant to the Austrian Securities Supervision Act, our clients operate an authorized firm providing investment services which is authorized to provide investment services on a professional basis.

Our clients are also authorized to provide said services pursuant to § 53b of the German Banking Law (Kreditwesengesetz) by virtue of their ISD passport and were granted the relevant authorization by the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht).

Our clients provide financial services, inter alia, by cooperating with freelance agents and consultants. Within the meaning of § 2 para. 10 of the German Banking Law our clients will be liable for the agents and consultants and are obliged to notify the securities regulators in Austria and Germany about said agents and consultants. The Austrian Financial Market Authority monitors and supervises the registered office of our clients and thus indirectly the tied agents under our clients' liability. Our clients' branches and its tied agents in Germany are supervised and reviewed by the German Federal Financial Supervisory Authority.

The branch has considerable staff and material resources to coordinate sales activities. A total of nine service centers ensures support and supervision of the tied agents (throughout Germany). There are also contacts to additional cooperation partners.

Currently, our clients are conducting transactions with 170 tied agents in Germany. All sales channels and (internal) communication are coordinated/processed by the branches or service centers. Nevertheless, the tied agents remain associated and committed to the "mother company" in Austria.

In order to avoid a situation where our clients would lose the legal basis to do business, which has always been protected thus far under European law, we believe that a retroactive exception to the current interpretation is imperative for the constellation described herein.

We assume that the interpretation under Article 71 is precisely about preventing the circumvention of legal obligations set forth by the securities regulators.

Such circumvention, however, is not possible, as long as a functioning, authorized branch is operated in the country where the tied agent has its registered office and is monitored by the securities regulators. This is also the case for the constellation described herein.

Our clients' firm providing investments services obtained the EU passport (codified according to European law and transposed into national law) to set up a business in Germany. In the course of said obtainment the permission was granted to recruit tied agents via the branch (in the same country) and to provide services via said agents. Now this – thus far – uncontested legal basis is to be withdrawn.

Our clients quite rightly relied on this option, which is codified in European law as well as in § 53b and § 2, para. 10 of the German Banking Law, and carried out major investments to build up their sales structure. An interpretation as given in Article 71 would destroy the business our client set up with high costs. Due to disproportionately high bureaucratic hurdles for the agents and consultants it would no longer be possible for our clients to assume liability for the sales partners. The agents and consultants are working on a free-lance basis.

Independent of the (ongoing) support, supervision and training of said sales partner via the branches and service centers, and the supervision by the German Federal Financial Supervisory Authority, even the business generated by the sales partners justifies in no way whatsoever the intention to subject said sales partners to the authorization and supervision provisions stipulated for branches.

In our view the interpretation in Article 71 blatantly contradicts the freedom of establishment under Articles 43 to 48 TEC. Furthermore, we would assume that this is in breach of the freedom to choose an occupation according to Article 12, para. 1 of the German Basic Law and in breach of the guarantee of property according to Article 14, para. 1 of the German Basic Law.

Should the interpretation in Article 71 be regarded as generally binding and thus be transposed accordingly into national law or implemented in administrative practice, we must claim damages from the responsible institution, as our clients had relied on a valid legal basis, which was withdrawn shortly thereafter within a very short period of time and without any apparent reason.

We assume that not only our clients are affected by this malaise and thus we can only underscore once again that **the currently intended interpretation needs to be amended by the aforementioned retroactive exception and implemented accordingly.**

We kindly ask you to respond to our request.

Thank you for your efforts.

Yours

Dr. Heiko Hofstätter
Attorney at Law